STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MAURICE CURRY, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MAURICE CURRY,

Respondent-Appellant.

UNPUBLISHED
December 3, 2002

No. 238793
Wayne Circuit Court
Family Division
LC No. 01-398279

Before: Jansen, P.J., and Holbrook, Jr., and Cooper, JJ.

PER CURIAM.

Following a bench trial, respondent, a juvenile, was convicted of armed robbery, MCL 750.529. The trial court ordered a delayed sentence, directing that respondent be placed in a juvenile facility pending a later assessment whether to place him in an adult correctional facility. Respondent appeals as of right. We affirm respondent's conviction, but remand for further dispositional proceedings.

Respondent claims that the evidence was insufficient to sustain his armed robbery conviction. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The prosecution need not negate every reasonable theory consistent with innocence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Robbery is an aggravated form of larceny. *People v Randolph*, 466 Mich 532, 544; 648 NW2d 164 (2002). The elements of armed robbery are "(1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995), overruled in part on other grounds in *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). The perpetrator must have a specific intent to permanently deprive the victim of property. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995).

The requisite intent to convict a person as an aider and abettor to a crime is that necessary for conviction as a principal. *Mass, supra* at 628. The person's state of mind may be inferred from all facts and circumstances. *Carines, supra* at 757. "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

" 'Aiding and abetting' describes all forms of assistance rendered to a perpetrator of a crime and comprehends all words or deeds that might support, encourage or incite the commission of the crime." *Turner, supra* at 568. Mere presence is insufficient to establish aiding and abetting. *People v Spearman*, 195 Mich App 434, 441; 491 NW2d 606 (1992), overruled on other grounds in *People v Veling*, 443 Mich 23, 43; 504 NW2d 456 (1993). However, "other factors such as a close association between the defendant and the principal actor, his participation in planning or executing the crime, and evidence of flight after the crime could be considered in determining whether there was sufficient evidence that he acted in concert with the principal." *People v Anderson*, 166 Mich App 455, 475; 421 NW2d 200 (1988). "One aids or abets when he takes conscious action to make the criminal venture succeed." *People v Usher*, 121 Mich App 345, 350; 328 NW2d 628 (1982).

Viewed most favorably to the prosecution, the evidence was sufficient to enable a rationale trier of fact to find beyond a reasonable doubt that respondent aided and abetted his companion in the commission of an armed robbery. Respondent initiated contact with the victim by first calling him a name, whereupon respondent's companion also participated in the name calling. Their conduct escalated to threatening behavior, with respondent putting his hands in his jacket in a manner to cause the victim to believe he might have a gun, whereupon respondent's companion actually pulled out a gun. A rational trier of fact could infer from the evidence that respondent began laughing when the gun was pulled out and that respondent was approving and encouraging his companion's threatening behavior. Although respondent and his companion began walking away, the victim's testimony reasonably supports the inference that respondent and his companion returned together to steal the victim's cell phone because respondent began to call the police. The fact that respondent did not say or do anything when his companion pointed the gun at the victim and demanded his cell phone, other than to laugh, did not preclude a finding that respondent aided and abetted his companion in committing the robbery. A rational trier of fact could find beyond a reasonable doubt from the actions of respondent and his companion from the time they first approached the victim until they departed together with the victim's cell phone that respondent and his companion were acting in concert and that respondent aided and abetted the commission of the armed robbery. *Carines, supra* at 758. The evidence was also sufficient to enable a rational trier of fact to find that respondent had the requisite intent to permanently deprive the victim of his cell phone. *Mass, supra* at 628; *King, supra* at 428.

Because the evidence was sufficient to sustain the armed robbery conviction, we reject respondent's claim that he was denied due process. *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). The trial court did not err in denying defendant's motion for a directed verdict. *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985); *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

Respondent next claims that the trial court erred by ordering a delayed sentence. Because this was a designated case, MCL 712A.2d(8) required the trial court to enter a dispositional order or impose a sentence authorized by MCL 712A.18(1)(n). See also MCR 5.955. We conclude

that the bificuated procedure applicable when reviewing a trial court's decision to impose an adult or juvenile sentence under MCL 769.1(3) and MCR 6.931 applies equally to a trial court's decision whether to enter a juvenile dispositional order, a delayed sentence, or an adult sentence under MCL 712A.18(1)(n) and MCR 5.955. *People v Thenghkam*, 240 Mich App 29; 610 NW2d 571 (2000).

Hence, we first review the trial court's factual findings regarding each statutory factor for clear error. *Id.* at 41. "This first part of the inquiry focuses on whether the court made a required finding of fact and whether the record supports that relevant finding; the absence of a required finding of fact or a factual finding without support in the record constitutes clear error." *Id.* at 41-42. Second, we review the trial court's sentencing decision for an abuse of discretion. *Id.* at 42. "This second part of the analysis scrutinizes how the court weighed its factual findings to come to the ultimate sentencing decision." *Id.* at 42.

We hold that the trial court clearly erred by failing to make findings of fact on each statutory factor. Moreover, "if the trial court fails to make findings of fact, it cannot fully exercise its discretion by giving proper weight to the various factors it must consider to make its decision under the sentencing statute." *Id*. at 48. Because respondent has shown a tangible error leading to the order delaying sentence, the order is invalid. *Id.* at 70. See also *People v Hazzard*, 206 Mich App 658, 661; 522 NW2d 910 (1994). Accordingly, we vacate the order delaying sentence and remand for a dispositional hearing at which the trial court shall determine whether to enter an order of disposition, or impose or delay imposition of the sentence, pursuant to MCL 712A.18(1)(n) and MCR 5.955(A).

Affirmed in part, vacated in part, and remanded for dispositional proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper